

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-07-0023
PETITION FOR RULES OF PROCEDURE	)	
FOR EVICTION ACTIONS	)	
	)	
	)	
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	)	
_____	)	

**ORDER ADOPTING  
RULES OF PROCEDURE FOR EVICTION ACTIONS**

A petition having been filed proposing to adopt the Rules of Procedure for Eviction Actions, and comments having been received, and upon consideration,

IT IS ORDERED that the Rules of Procedure for Eviction Actions be adopted in accordance with the attachment hereto, effective January 1, 2009.

DATED this \_\_\_\_\_ day of December, 2008.

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RUTH V. MCGREGOR  
Chief Justice

TO:  
Rule 28 Distribution

mwa

## ATTACHMENT

### RULES OF PROCEDURE FOR EVICTION ACTIONS

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#### Rule 1. Title and Scope of Rules

These rules shall be known and cited as the Rules of Procedure for Eviction Actions ("RPEA"). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to in these rules as "eviction actions." For purposes of these rules, there shall be only one form of action known as an "eviction action." The Arizona Rules of Civil Procedure apply only when incorporated by reference in these rules, except that Rule 80(i) shall apply in all courts and Rule 42(f) shall apply in the superior courts.

#### Rule 2. Construction of Rules

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.

#### Rule 3. Computation: Shortening or Extension of Time

- a. Computation of Time. Unless otherwise stated in these Rules, or unless an applicable statute provides otherwise, the time limitations prescribed in these rules shall mean calendar days.
- b. Shortening or Extension of Time. Except as specifically provided for by statute or these rules,

the time for doing any of the acts provided for in these rules or by order of the court may be shortened or extended by the court upon stipulation or upon motion for good cause shown.

**Rule 4. Duties of Parties and Attorneys**

a. Due Diligence. Each party and attorney filing or appearing in an eviction action or defense shall exercise due diligence to ensure that the action has a good faith basis; that the relief sought is consistent with the applicable rental agreement or applicable law; and that all required notices have been properly served. Attorneys must exercise reasonable care to ensure that their pleadings are accurate and well-grounded in fact and law.

b. Good Faith. Every action taken in an eviction proceeding and every motion or other pleading filed shall be taken or filed in good faith by the party or attorney responsible for filing it.

c. Sanctions. The court may impose sanctions against a party or attorney found to have violated these duties after notice and opportunity to be heard.

d. Satisfaction of Judgments. Once a judgment has been satisfied by the payment of the monetary award, or the parties have entered into a new rental agreement or created a novation of the prior rental agreement, the party in whose favor the judgment was entered shall file a Satisfaction of Judgment with the court that entered it and serve a copy on the judgment debtor. The duty to file the satisfaction of judgment is on the prevailing party and not on the attorney who represented the party. In the event that a prevailing party fails to satisfy a judgment rendered and cannot be located with a showing of reasonable diligence, the judgment debtor may file a motion to compel satisfaction of judgment and the court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.

e. Entry of Appearance. No attorney shall appear in any eviction action or file a pleading or any other document in any eviction action without first appearing as counsel of record and entering a notice of appearance, substitution or association as counsel. A notice of appearance, substitution or association of counsel may be written and filed with the court, or, if permitted by law, may be made orally on the record. Counsel may make an oral association limited solely to the scheduled hearing at which counsel appears, and responsibility for the matter shall remain with counsel of record.

(1) An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution of counsel in the case.

(2) An attorney of record shall be deemed responsible for the acceptance of post judgment pleadings and motions until the expiration of thirty days after the time for appeal has expired.

f. Compliance with Laws and Regulations Governing Subsidized Rent. The parties shall comply with all federal and state laws and regulations governing subsidized rent.

**Rule 5. Summons and Complaint: Issuance, Content and Service of Process**

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Date and time set for the trial of the matter;
- (3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
- (4) A disclosure in substantially the following form: "Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible."
- (5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Procedures Information Sheet substantially in the form included as Appendix A to these Rules.

b. Complaint. The complaint shall:

- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
- (2) Include the business name, if any, and address of the property;
- (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
- (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
- (5) State that the property in question is located within the judicial precinct where the complaint is filed;
- (6) State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, "**YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY**";
- (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be attached as an exhibit to the complaint.

(8) Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

c. Complaint for Monetary Damages. If the complaint seeks a money judgment for rent, late charges, or other fees, charges or damages permitted by law, the complaint shall also state:

(1) The frequency with which the rent is to be paid;

(2) The due date for each payment;

(3) The amount of rent due on each date;

(4) The method of calculating late fees;

(5) The total amount of rents, late fees, and other fees, charges or damages permitted by law that are due on the date of filing;

(6) The nature and amount of any rent concessions that the plaintiff contends must be reimbursed; and

(7) The amount of attorney fees, if permitted by law or contract, that would be due to plaintiff in the event of a default by the defendant.

d. Additional Requirements for Complaint.

(1) If the action is based solely on non-payment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the defendant may contact the plaintiff or plaintiff's attorney and may reinstate the lease agreement and cause the eviction action to be dismissed if, prior to the entry of judgment, the defendant pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.

(2) If the complaint seeks a judgment for reasons permitted by law other than the non payment of rent, the complaint shall state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense.

e. Computation of Time. The date of service shall not be counted when computing time for service of the summons and complaint. The date of the initial appearance shall be counted for that purpose.

f. Service of Process. Service of the summons and complaint shall be accomplished by either personal service or post and mail service for a special detainer action, and for a forcible detainer action, as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure. Service of process shall only be performed by a person authorized to do so under Rule 4(D) of the Arizona Rules of Civil Procedure. Return of service and

proof thereof shall be made by affidavit.

g. **Failure to Obtain Service.** A complaint that is not served within the time required by applicable statute may be dismissed at the initial appearance date unless the defendant waives service in writing, or the initial appearance may be continued upon a showing of good cause to allow additional time for service. If the defendant appears at the initial appearance, the appearance shall constitute a waiver of any objections to the form or manner of service unless the defendant asserts those grounds at the initial appearance or in a previously filed written answer.

**Rule 6. Service of Pleadings, Other Papers and Orders After Complaint**

a. **General Requirement of Service.** Except as otherwise provided in these Rules or ordered by the court, every pleading subsequent to the original complaint, every written motion, every written notice, appearance, demand and similar paper and any attachments, and every order shall be served upon each of the parties to the action. A written motion or request that is filed with the court, but not served as required by this rule, shall be considered an impermissible ex parte communication.

(1) Filing of documents may be made by delivering the documents to the appropriate justice court or superior court file counter for date stamping.

(2) The court may permit a party to file documents directly with the judge in open court.

(3) Filing may also be accomplished by prepaid, first class mail to the court, whereupon the date of receipt by the file counter shall be considered the date of filing.

b. **Service on Parties in Default.** No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in Rule 5(f) of these Rules.

c. **How Service Made.** Service required by this rule may be accomplished by personal service as defined in Rule 18(f) of these Rules or after a party has appeared by mailing the document to be served to the last known address of the person to be served. Service by facsimile transmission or other method may be used where agreed to by the parties. The date and manner of service shall be noted on the original of the document served or in a separate certificate filed with the court.

d. **Service upon Attorney.** When an attorney has entered an appearance in an action for a party, service upon that party shall be accomplished by service upon that attorney, unless the court directs that service be made upon the party. Service upon the attorney may be accomplished by any of the methods authorized by subsection (c) of this rule.

e. **Service After Judgment.** Thirty days after the time for appeal from a judgment has expired, or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgment, shall be served as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

### **Rule 7. Answers**

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant's answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff's claims.

### **Rule 8. Counterclaims and Consolidation**

a. Basis. Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party. A counterclaim shall:

(1) State specific facts claiming that the landlord has violated the rental agreement or an applicable statute so that the landlord has an opportunity to prepare a defense; and

(2) If any notices were required, state the approximate date and manner those notices were sent to the plaintiff and summarize the content of those notices.

b. Impact on Justice Court Jurisdiction. The filing of a counterclaim shall not defeat jurisdiction of a justice court in an eviction action, and no eviction action shall be transferred to the superior court solely because a counterclaim was filed unless it is permitted by statute and is not within the statutory jurisdiction of the justice court. The justice court shall review such claims to determine whether they have a statutory basis and whether the prayer for relief is within or exceeds the jurisdiction of the justice court. If a counterclaim has a statutory basis and the prayer for relief is not within the jurisdiction of the justice court, the court shall transfer the matter to the superior court. Where the counterclaim filed includes one or more aspects that are defective or impermissible, the court may permit the defendant to restate it in a proper fashion, or order the counterclaim dismissed without prejudice.

c. Consolidation. An eviction action may be consolidated only with one or more eviction actions but shall not be consolidated with any other type of action.

d. If a residential landlord is not in compliance with the rental agreement or statute, the tenant may counterclaim for any amount the tenant is entitled to recover under the rental agreement or statute.

### **Rule 9. Motions**

a. Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.

b. Responses and Replies. Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.

- c. Motions to Amend. The court may grant motions to amend pleadings for good cause shown.
- d. Motions for Judgment on the Pleadings. At any time after an answer to either a complaint or a counterclaim has been filed, a party may move for a judgment on the pleadings. The court shall not consider matters outside the pleadings when ruling on a motion for judgment on the pleadings.
- e. Motions to Dismiss. In response to either a complaint or a counterclaim, a party may make a motion to dismiss some or all of the claims.
- f. Motions for Reconsideration. A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. Unless the court otherwise directs, all motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response.
- g. Other motions. Other appropriate motions may be made by either party.
- h. Failure to timely respond to a written motion filed by an opposing party, or failure to appear at the time and date set for an oral argument on a filed motion may be deemed to be consent to the denial or granting of the motion, and the court may dispose of the motion summarily.
- i. All written motions shall be considered without oral argument unless ordered by the court upon request of a party or the court's own motion. All motions requesting an order for relief filed with the superior court shall be copied to the assigned judge, accompanied by a proposed order, which shall comply with the formatting requirements of Rule 5(j) of the Arizona Rules of Civil Procedure.

## **10. Disclosure**

- a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents the party intends to introduce as an exhibit at trial.
- b. Upon good cause shown, the court may order the taking of depositions, inspection of the premises, or the production of other pertinent documents in a manner that will not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. If a party fails to comply with this rule without good cause, the court may take appropriate action, including granting a continuance, excluding evidence not disclosed, and sanctioning the offending party or parties, up to and including dismissing the complaint or counterclaim.
- d. Any party may request the issuance of a subpoena by the court to compel testimony and/or the production of documents. The person subpoenaed may object to the subpoena. The court may quash a subpoena upon good cause shown. Failure to comply with a subpoena may constitute contempt of court. Subpoenas shall be served upon the subject person pursuant to Rule 4.1 and 4.2 of the Arizona Rules of Civil Procedure.

**Rule 11. Initial Appearance and Trial Procedures**

a. In General. All proceedings in eviction actions shall be recorded, either through a recording device or by a court reporter. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant, the court shall:

(1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

(2) State or summarize the material allegations contained in the complaint.

(3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

b. Defendant's Plea.

(1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may require the defendant to file a written answer. If the court orders a written answer to be filed, the court should advise the defendant of both the requirement of an answer fee and the defendant's right to apply for a waiver or deferral of the fee.

(2) The defendant shall not be required to answer until the initial appearance. At the initial appearance, if the trial is not continued, the defendant may file an oral answer on the record. No answer fee shall be required for an oral answer.

c. Continuances. Whenever possible, the trial should be held on the initial return date. The court may order the continuance of a trial date by up to three court days in justice court or ten days in superior court on the request of a party for good cause shown or to accommodate the demands of the court's calendar, but the court nevertheless shall give priority to hearing and resolving alleged "immediate and irreparable" evictions. No continuance of more than three court days in justice courts or ten days in superior courts may be ordered unless both parties are in agreement.

d. Trial Settings. Contested detainer matters shall be set for a trial by a judge alone unless a jury trial is demanded by the plaintiff in the complaint or by the defendant at or before the initial appearance. Failure to request a jury trial at or before the initial appearance shall be deemed a waiver of that party's right to a jury trial. At the initial appearance, if a jury trial has been demanded, the court shall inquire and determine the factual issues to be determined by the jury. If no factual issues exist for the jury to determine, the matter

shall proceed to a trial by the judge alone regarding any legal issues or may be disposed of by motion or in accordance with these rules, as appropriate.

- (1) Witnesses at trial shall testify under oath or affirmation. Witness testimony may be oral or may be provided by transcript of a deposition if the witness is unavailable.
- (2) All evidence taken at trial, or which is attached as an exhibit to a motion, shall be subject to the Arizona Rules of Evidence.

e. **Pleading Requirement.** Except for those additional damage items contemplated by Rule 13(c)(2), the plaintiff shall not be permitted to advance allegations at the initial appearance or any subsequent trial unless those allegations were properly stated in the complaint. The defendant shall not be permitted to advance allegations at a continued trial that were not included in a written answer or counterclaim or in an oral answer made at the initial appearance.

## **12. Trial by Jury**

a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court. Failure to submit written voir dire questions a day before the panel is assembled waives the right to submit questions. When, after challenges for cause, a panel of thirteen in justice court or fifteen in superior court is available, the court shall permit three peremptory challenges per side to reduce the jury to seven in justice court or nine in superior court. One of the jurors shall be selected as the alternate after the evidence is presented and before deliberations.

b. Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, and the elementary legal principles that will govern the proceeding. At least one day prior to the commencement of a jury trial, any party may file written requests that the court instruct the jury on the law as set forth in the requests. A party shall be deemed to have waived request for other instructions except those that could not reasonably have been anticipated prior to trial.

c. The order of trial shall be as follows: The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case; the defendant or the defendant's counsel may read the answer and counterclaim, if any, and may make a statement of the case to the jury, but may defer making such statement until after the close of the evidence on behalf of the plaintiff; the plaintiff shall then introduce evidence; the defendant shall then introduce evidence; the plaintiff may then introduce rebutting evidence; the defendant may then introduce rebutting evidence in support of any counterclaim(s). The parties then may make closing arguments in the same order.

d. If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial. When the jurors retire to deliberate, they shall be kept together in a convenient place, in the charge of a proper officer who shall not allow any communication to be made to them, or make any, except to ask them if they have agreed upon their verdict.

**13. Entry of Judgment and Relief Granted**

a. Items to Review. Except for stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action the court shall:

- (1) Determine whether the service of the summons and complaint was proper and timely, and whether the summons and complaint included all the information and notice(s) required under Rule 5.
- (2) Determine whether the tenant or occupant of the premises received proper termination notice if one was necessary, and was afforded any applicable opportunity to cure. If the notice does not comply with the statute or is not properly served, the court shall dismiss the action.
- (3) Determine whether the facts alleged, if proven, would be sufficient to determine that plaintiff has a right of superior possession due to a material breach of the lease agreement or for any other basis in law.
- (4) If it appears that a landlord has accepted a partial payment in a case claiming non-payment of rent under the Arizona Residential Landlord and Tenant Act, the court shall inquire whether the landlord accepted the partial payment, and if so, can produce a partial payment agreement and waiver signed by the defendant as required by the statute. If the landlord is unable to prove that the waiver was signed, the court shall dismiss the action.

b. Forms of Judgment.

- (1) Guilty Plea. If the defendant appears at the initial appearance and enters a plea of "guilty" or "responsible," the court shall, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, enter judgment in favor of the plaintiff.
- (2) Verdict. At the conclusion of a trial, and after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, the court shall either announce its decision or take the matter under advisement. If the court takes the matter under advisement, it shall issue a decision promptly.
- (3) Default Judgment.
  - A. If the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted, the court, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, shall enter a default judgment against the defendant.
  - B. In an action alleging an immediate and irreparable breach, the court shall hear evidence establishing such a breach before ordering a writ of restitution in not less than 12 nor more than 24 hours.
  - C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.

(4) Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

**Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.**

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), if all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint.

c. Relief Granted.

(1) Possession of the premises.

A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.

B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as "material and irreparable" under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.

C. If the defendant is found not guilty, judgment shall be entered in favor of the defendant. If the judgment is for the defendant and the plaintiff has possession of the premises, possession of the premises shall, at the request of the defendant, be awarded to the defendant with a writ of restitution to issue after five calendar days.

D. The date for the issuance for a writ of restitution shall not be delayed or extended beyond the date provided by statute, unless the parties stipulate otherwise.

(2) Damages. In addition to determining the right to actual possession, and if either party seeks a money judgment, the court may award damages to the party entitled to possession if the party seeking money damages provided proof to the court of a factual and legal basis for an award of rent or any reasonable late fees, attorney fees or other requested fees, charges or damages. If a written rental agreement exists, the party seeking money damages shall have a copy of the written rental agreement available for the court to review at the initial appearance or subsequent hearing at which the judgment is rendered.

The court shall not award any amount for damages or categories of relief not specifically stated in the complaint or counterclaim. The amounts awarded in the judgment must be consistent with the amounts sought in the complaint or counterclaim, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate.

- A. Rent. If appropriate, rent shall be awarded to a prevailing plaintiff together with any additional rent that has accrued since the complaint was filed. If the plaintiff is entitled to rent incurred after the judgment has been entered, then the plaintiff may seek that amount in a separate civil action.
- B. Utilities. If the landlord charged utilities to the tenant under a written or oral rental agreement, unpaid amounts may be awarded to the prevailing plaintiff.
- C. Late Charges. If the written rental agreement provided for periodic late charges in the event of a rent default, the court shall award the prevailing plaintiff reasonable late charges. No late charges shall be awarded unless the court is presented with evidence that they are specified in a written rental agreement.
- D. Additional fees. Other fees such as extra person fees, pet fees, storage fees, signage fees, common area assessments, and other charges that were specified in a written rental agreement and were to be collected periodically together with other rental charges may be awarded to the prevailing plaintiff in accordance with the terms of the agreements. Charges sought that were not contained in a written rental agreement shall not be awarded in an eviction action, but may be separately sought in a civil action.
- E. Plaintiff's Damages. If the plaintiff prevails, in addition to rent and late fees, when appropriate, the court may award to the plaintiff other damages for breach of the rental agreement, including property damages, when properly pled in the complaint and when such damages resulted from the breach giving rise to the eviction. When such claims for other damages are substantial and disputed such that a fair trial of the claims would likely delay the prompt determination of the eviction action, the court may sever those claims and dismiss them without prejudice, permitting the plaintiff to reassert the claims in a separate civil proceeding.
- F. Defendant's Damages. Damages and/or offsets shall be awarded by the court if a defendant prevails on a counterclaim or defense. In such event, the court shall determine the prevailing party for purposes of awarding costs and reasonable attorney fees.
- G. If undisputed rent has been deposited with the court in connection with a

defendant's counterclaim, it shall be distributed in accordance with the judgment without undue delay after the time for appeal has expired. If no rent remains due after such proceedings or the tenant is found to have acted in good faith and satisfies a judgment for rent entered for the landlord, judgment shall be entered for the tenant in the action for possession.

H. Court costs shall be awarded as required by A.R.S. § 12 341.

d. Rent Concessions. If the court finds that a rental agreement or lease provided a rent concession such as "free rent" for a period, a budget for tenant improvements, or a cash move in allowance, and the rental agreement provides that in the event of a default the concession becomes due and payable, the amount of the concession may be included as additional damages in the judgment to a prevailing plaintiff if pleaded in the complaint. Alternatively, at the plaintiff's option, such amounts may be sought in a separate civil action.

e. Late Fees in Mobile Home Park and Recreational Vehicle Park Evictions. In cases involving mobile home parks and recreational vehicle parks, the court shall limit the award of periodic late charges in an eviction action arising out of such a tenancy to the statutory amount, and the court shall not reduce late charges calculated in accord with that limitation unless the plaintiff fails to establish the existence of a written agreement regarding such late charges.

f. Attorney Fees. Reasonable attorney fees shall be awarded to the prevailing party if the court determines that such fees are provided for by statute or in a written contract. Any such award may not exceed the amount the client has paid or agreed to pay.

g. Where permitted by law, the court may provide injunctive relief in addition to the remedies set forth above.

#### **Committee Comment**

**Rule 13(d).** The Servicemembers' Civil Relief Act ("SCRA") will apply to certain cases in which the tenant is in the military or a dependent family member of military personnel. See 50 U.S.C. App. §§ 531-538. Among other things, SCRA generally allows military members to terminate a residential lease agreement without penalty if they enter military service on active duty or are deployed or transferred, and SCRA also protects dependent family members of military personnel.

**Rule 14. Writs of Restitution.** The court shall promptly issue a writ of restitution upon timely application of a party entitled to it if the application is accompanied by the appropriate fee and deposits. The writ of restitution shall direct the constable or the sheriff, as appropriate, to return possession of the premises to the party entitled to possession under the judgment. A judge, justice of the peace, court commissioner, or the clerk of the superior court may issue the writ of restitution if it appears that a judgment granting possession has been entered in favor of the party filing the writ and the action has not been stayed.

a. Delays in Issuance. Neither the issuance nor the enforcement of a writ of restitution will be suspended, delayed, or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion unless the court finds good cause.

b. Time Standards for Writs of Restitution.

(1) Application for Writ. A party who obtains a judgment for possession in an eviction action shall have up to 45 days to apply for a writ of restitution.

(2) Writ Applications after 45 Days. If a party applies for a writ of restitution more than 45 days after the judgment, the party must also explain the reasons for the delay in making the application and shall certify that the tenancy has not been reinstated since the date of the judgment. If it is clear that the tenancy has not been reinstated, the court shall issue the writ. If it appears to the court that the tenancy has or may have been reinstated, the court shall schedule a hearing before granting the application. This hearing shall be scheduled no more than three business days after the application. The court shall attempt to contact the party in possession by telephone to provide notice of the hearing, and the applicant for the writ shall cause a notice of the date, time, place and purpose of the hearing to be delivered to the party in possession either personally or by posting the notice on the main entrance to the premises.

c. Quashing a Writ of Restitution. After a judgment for possession has been issued, a party may file a motion to stay the issuance of a writ or quash a writ already issued. The court shall promptly review the motion. If the court finds good cause to believe that the writ was improperly or prematurely issued, it may stay the issuance or enforcement and schedule a hearing on the motion. Any such hearing shall be conducted as soon as possible but in no event later than three court days after the filing of the motion.

**Rule 15. Relief from Judgment or Order**

a. Motions to Set Aside Judgments, Orders, or Proceedings. Either party may file a motion to set aside a judgment, order or proceeding on any of the following grounds:

- (1) The court did not have jurisdiction to hear the case;
- (2) The defendant tendered all amounts due under the lease agreement prior to a judgment being entered or made a partial payment under the Arizona Residential Landlord Tenant Act, A.R.S. §§ 33-1301 to -1381, which was accepted by the landlord;
- (3) A party did not receive proper notice or was not properly served;
- (4) Mistake, inadvertence, surprise, or excusable neglect;
- (5) Newly discovered material facts exist that could establish a defense to an allegation;
- (6) A party is subject to protection under bankruptcy laws;
- (7) A party is requesting relief under the Servicemembers' Civil Relief Act;
- (8) The parties have stipulated to set aside the judgment;
- (9) The judgment is contrary to the law; or
- (10) Fraud, misrepresentation, or other misconduct of an adverse party.

The motion shall be filed within a reasonable time, and, for reasons (2), (4), and (5), not more than 60 days after the judgment or order was entered.

b. Clerical errors may be corrected by the court with or without notice to the parties.

c. A post judgment motion affecting possession of the property shall be treated as an emergency matter and decided within three court days.

d. Where a post judgment motion does not affect possession of property, the other party may file a response within 10 court days of service of the motion. The moving party may then file a reply within 5 court days of service of the response.

**Rule 16. Transfer of Cases from Justice to Superior Court**

A justice court must transfer an eviction action to the superior court whenever the amount in controversy in the complaint or in a valid counterclaim exceeds the statutory ceiling for justice courts and whenever title or ownership of the premises becomes an issue. If a justice court transfers an eviction action to the superior court as provided by statute or rule, the procedures set forth in A.R.S. § 22 201 shall be followed. Transfers shall not delay the eviction action, and both the transferring and receiving court shall take reasonable steps to assure that no delays result from the transfer.

**Rule 17. Appeals**

a. General. Appeals from a lower court to the superior court shall be taken in the manner prescribed by A.R.S. § 12-1179 and by the Superior Court Rules of Appellate Procedure. Appeals from superior court shall be governed by A.R.S. § 12-1182 and the Rules of Civil Appellate Procedure. Unless otherwise ordered by the court, in all cases in which a party files a cost or supersedeas bond or pays rent to the clerk pending an appeal, the clerk shall return to that party any remaining portion of the bond or rent upon final adjudication of the case.

b. Justice Court Appeals.

(1) Cost bond. The court shall set a cost bond at the time the notice of appeal is filed. The court may waive the cost bond if the appellant files a satisfactory affidavit of his or her inability to pay. The purpose of this bond shall be to reimburse the appellee's taxable costs if the appellant does not prevail on appeal. Failure to post a cost bond, unless waived based on an affidavit of inability to pay the judgment, is cause to dismiss the appeal. A separate cost bond is not required, however, if the appellant files a supersedeas bond that includes security for the payment of costs on appeal.

(2) Rent Pending Appeal. If the appellant wants to remain in possession of the premises while the appeal is pending, the appellant must pay to the clerk of the court any rent due apart from amounts included in the judgment and continue paying to the clerk additional rent as it becomes due during the appeal. Failure of the appellant to pay any rent due as it accrues is cause for the appellee to seek an order allowing it to enforce a writ of restitution, but shall not

be cause for the dismissal of the appeal. In this event, the appeal will proceed despite the appellant's loss of possession of the premises while it is pending.

(3) Supersedeas bond. If the appellant wants to stop the enforcement of the monetary portion of the judgment while the appeal is pending, he or she shall post a supersedeas bond in an amount equal to the dollar amount of the judgment being appealed. Failure to post a supersedeas bond shall allow the enforcement of the monetary portion of the judgment but shall not be cause for dismissal of the appeal.

c. Superior Court Appeals. An appeal from the superior court shall not cause a stay of execution of the judgment unless the superior court so orders. The appellant shall file a bond in an amount fixed and approved by the court, conditioned on the appellant prosecuting the appeal to its conclusion. The bond shall be filed in an amount that provides security for the rental value of the premises pending the appeal and all damages, costs and rent that has been or may be ordered by the superior court.

In the event that a defendant remaining in possession pending appeal subsequently breaches an appeal condition imposed by the court, the plaintiff may file an emergency motion to lift a stay, and the court shall conduct a hearing within three days. If the third day is a Saturday, Sunday or other legal holiday the hearing shall be held on the next court day.

The court's decision denying a stay, conditioning the stay, or subsequently lifting the stay after a breach of an imposed condition may be reviewed by filing a petition for a special action with an appropriate appellate court pursuant to the Rules of Procedure for Special Actions.

**Rule 18. Definitions**

a. "Eviction" or "eviction action" as used herein shall mean forcible detainer actions and special detainer actions as defined in this rule.

b. "Ex parte communications" are communications between a litigant or its attorney and a judge, without including the opposing party. Ex parte communications are generally prohibited. However, a communication with a judge in open court on a date and at a time when all litigants have been notified that the issue will be addressed is not an ex parte communication.

c. "Forcible detainer" shall have the same meaning as set forth at A.R.S. §§ 12 1173 and 12 1173.01.

d. "Good cause" shall mean a stated, substantial reason, the accommodation of which will serve the interests of fairness and justice, without also causing a significant delay or harm to another party. Good cause may include relieving a person from the consequences of a mistake or inadvertence, but not from simple neglect.

e. "Initial return date" is the date scheduled for the first appearance by the defendant following service of the summons and complaint. This shall also be known as the "initial appearance date," or the "trial date."

- f. "Personal service" shall mean person-to-person delivery of any pleading or notice to the intended recipient. If service is made at the residence, delivery of the papers to another person of suitable age and discretion who lives at the residence shall also qualify as "personal service."
- g. "Pertinent" shall mean anything that relates directly and significantly to the matter in issue.
- h. "Post and mail service" shall have the same meaning as set forth in A.R.S. §§ 33 1377(B) and 33 1485(B).
- i. "Rental agreement" shall include, but not be limited to, oral and written rental agreements and leases.
- j. "Special detainer" refers to the procedures set forth at A.R.S. §§ 33 1377 and 33 1485.

**Rule 19. Miscellaneous**

- a. If a plaintiff is entitled to rent, late charges, court costs or attorney fees in a detainer judgment, the court shall not deny the request or delay entry of judgment solely because of a claim that Fair Debt Collection Practices Act notification requirements have not yet been satisfied.
- b. If, after entry of a detainer judgment a plaintiff or attorney concludes, either unilaterally or in response to a dispute by the defendant, that the basis for the detainer action or judgment was not valid, then the plaintiff shall promptly file a motion to set aside the judgment.
- c. No agreement between parties or their attorneys shall be binding if later disputed unless it is in writing and signed by the parties or their attorneys or made orally in open court on the record. This rule shall not prohibit a party who disputes the content of the agreement to move the court to refuse to enforce the agreement if good cause is shown for doing so.

## Appendix A

### RESIDENTIAL EVICTION INFORMATION SHEET

#### (PUBLICATION AND DISTRIBUTION REQUIRED BY THE ARIZONA SUPREME COURT)

**Notice.** A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed or with the summons.

**Rent cases.** If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

**Before Court.** Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

**At Court.** At the time and date listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says "no", he or she will need to briefly tell the judge why. If the reason is a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation". A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments against tenants.

**Continuances.** Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

**After a Judgment.** If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends the tenants' possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay an appropriate bond and continue to pay rent into court as it becomes due. If the tenant prevails the court will dismiss the case. Absent an appeal, the tenant will need to obtain the landlord's approval and enter a new lease to continue living in the

residence.

**Sources of Additional Information.** You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from the Secretary of State's office or web page: [www.azsos.gov](http://www.azsos.gov). In Maricopa County if you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line at (602) 257-4434 or Community Legal Services at (602) 258-3434. Contact the court in other counties for similar referrals. You can obtain a summary of the obligations of landlords and tenants on the web page for justice courts in Maricopa County: [www.superiorcourt.maricopa.gov/justicecourts/info](http://www.superiorcourt.maricopa.gov/justicecourts/info).